

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED

FEB 09 2006

LEONARD GREEN, Clerk

No. 04-4512

1:02-CV-439

THE KROGER COMPANY,  
Plaintiff - Appellee,

v.

MALEASE FOODS CORP.,  
Defendant - Appellant.

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FILED  
JAMES BOHANN  
CLERK

Before: MOORE, ROGERS, and McKEAGUE, Circuit Judges.

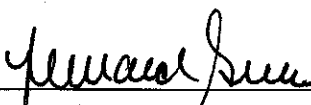
**JUDGMENT**

On Appeal from the United States District Court  
for the Southern District of Ohio at Cincinnati.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the denial of the motion to dismiss under Fed. R. Civ. P. 12(b)(2) by defendant Malease Foods Corporation is REVERSED, and the case is REMANDED to the district court for an entry of an order of DISMISSAL, without prejudice, for lack of personal jurisdiction. IT IS FURTHER ORDERED that on REMAND, the order granting the motion to show cause by plaintiff The Kroger Company, or in the alternative for leave to request injunctive relief must be VACATED due to the district court's lack of jurisdiction over Malease Foods Corporation.

**ENTERED BY ORDER OF THE COURT**

  
Leonard Green, Clerk